



FSCO A06-002228

BETWEEN:

ALNOOR JADAVJI

Applicant

and

**SECURITY NATIONAL INSURANCE CO./
MONNEX INSURANCE MGMT. INC.**

Insurer

DECISION ON EXPENSES

Before: Denise Ashby

Heard: May 9, 2008, at the offices of the
Financial Services Commission of Ontario

Appearances: Alon Rooz for Mr. Jadavji
Gaspare Di Salvo and Christopher A. Caston for Security National
Insurance Co./Monnex Insurance Mgmt. Inc.

Issues:

The Applicant, Alnoor Jadavji, was injured in a motor vehicle accident on September 7, 2005. He applied for and was denied benefits by Security National Insurance Co./Monnex Insurance Mgmt. Inc. (Security) under the *Schedule*.¹ The parties were unable to resolve their dispute at mediation and Mr. Jadavji applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended. Prior to the arbitration hearing the parties resolved all outstanding issues with the exception of expenses.

¹The *Statutory Accident Benefits Schedule — Accidents on or after November 1, 1996*, Ontario Regulation 403/96, as amended.

The issue in this hearing is:

1. What is the amount of the expenses to which Mr. Jadavji is entitled in respect of this arbitration hearing pursuant to subsection 282(11) of the *Insurance Act*, R.S.O. 1990, c. I.8?

Result:

1. Mr. Jadavji is entitled to \$6,628.75 as his expenses of the arbitration pursuant to subsection 282(11) of the *Insurance Act*, R.S.O. 1990, c. I.8.

EVIDENCE AND ANALYSIS:

Mr. Jadavji submitted a Bill of Costs of \$8,544.13. He submits that his claim is reasonable on the basis that the hearing was scheduled for 4 days and was only settled on the eve of hearing.

Mr. Jadavji relies on arbitration decisions that have found that a global, rather than a line by line, assessment of expenses is appropriate when awarding expenses. As well, he relies on cases which have awarded a ratio for preparation time plus disbursements. Security disputes the accuracy of the Bill of Costs. It submits that Mr. Jadavji's failure to provide dockets in support of his claim, as provided for in Rule 79 of the *Dispute Resolution Practice Code* (the "Code") requires closer scrutiny of the amounts claimed. It relies on decisions which have found that where dockets are not kept, an applicant cannot expect to be awarded the full measure of the expenses claimed.

The criteria for awarding expenses and the amount of expenses an arbitrator may order are set out in Section F of the *Code as Schedule* to R.R.O. 1990, Reg. 664, made under the *Insurance Act*, as amended to O. Reg. 275/03. The criteria are: degree of success, whether there were written offers to settle, were the issues novel, the conduct of the parties and whether any part of the proceeding was improper, vexatious or unnecessary.

Fees:

The Bill of Costs is particularized but has no dates upon which the services were provided. Mr. Rooz has asserted privilege with respect to any dockets the firm might have kept. I agree with the arbitrator in *Frumusa and General Accident Assurance Co. of Canada*² that a party who does not provide dockets risks not being adequately compensated for incurred expenses. As well, the overarching consideration in the awarding of expenses is reasonableness.

There were 4 issues to be dealt with in the arbitration: caregiver, damage to clothing, housekeeping and an examination expense. The materials submitted during the expense hearing indicate that they were not complex. This is supported by the fact that most of the case preparation and representation was done by articling students.

Mr. Rooz supervised the students and claims an hourly rate of \$150.00 for these services. I do not find that this is reasonable given the nature of the file and the experience of Mr. Ezer, the articling student who was to represent Mr. Jadavji at hearing. Therefore, I set Mr. Rooz' rate at \$95.99. He has claimed 15.5 hours for all services rendered in the arbitration proceeding including preparation for the expense hearing. Given the uncomplicated nature of the case; the experience of the student who did the majority of the work and the failure to provide supporting dockets, I find that 7 hours of Mr. Rooz' time would have been reasonable. Therefore, I award \$671.93 plus GST for Mr. Rooz' fees.

Mr. Rooz claims 45.4 hours at an hourly rate of \$50.00 for all services provided by articling students during the arbitration proceeding. The modest hourly rate reflects the additional time it takes students to research and prepare materials. The materials submitted at the expense hearing indicate that there was a significant amount of documents and correspondence to be reviewed and considered. Therefore, I find the \$2,270.00 plus GST a reasonable expense of the arbitration. As well, he claimed \$6.90 plus GST for a clerk's time which I also find reasonable.

²(OIC A96-000192, February 12, 1998)

Mr. Rooz claimed a counsel fee for 1.5 hours for services rendered by a lawyer no longer employed by the firm. Security submitted her affidavit deposing to the fact that she did not do any work on the file. Mr. Rooz submitted that this time should be attributed to him. In the absence of supporting dockets, I reject his submission and disallow the amount claimed.

On the basis of the foregoing, I award \$3,096.27 in respect of fees inclusive of GST of \$147.44.

Disbursements:

Subsection 5(5) of Section F of the *Code*, provides:

The amount of expenses paid by or on behalf of the insured person or the insurer to an expert for the preparation of a report may be awarded, to a maximum of \$1,500.

There was no dispute that either Dr. Polyvosor or Dr. Macleod would qualify as experts had their evidence been required at an arbitration hearing. Therefore, for the purpose of this expense hearing I accept that they would come within the provisions of subsection 5(5). I find the invoices submitted by Dr. Polyvos and Dr. Macleod are reasonable expenses of the hearing and within the amounts provided for by the *Regulation* and award them in full.

A preparation fee of \$500.00 was claimed in respect of the anticipated evidence of I. Jolud, a kinesiologist. Caregiving and housekeeping expenses were issues in dispute in the arbitration. The evidence of a kinesiologist would likely have assisted a hearing arbitrator in the consideration of these issues and therefore I find it a reasonable expense of the hearing.

Mr. Jadavji seeks \$238.00 as disbursements for photocopying, postage and the services of a process server. I find that this is a very modest claim for such expenses given the materials before me.

On the basis of the foregoing, I award Mr. Jadavji the full amount of his disbursements in the amount of \$3,532.48 inclusive of GST.

Expense Award:

On the basis of the foregoing, I award Mr. Jadavji his expenses of \$6,628.75 inclusive of GST, calculated as \$3,096.27 in respect of fees and GST and disbursements in the amount of \$3,532.48 inclusive of GST.

Denise Ashby
Arbitrator

July 15, 2008
Date



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**SECURITY NATIONAL INSURANCE CO./
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Insurer

ARBITRATION ORDER

Under section 282 of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, it is ordered that:

1. Security National Insurance Co./Monnex Insurance Mgmt. Inc. shall pay directly to Mr. Jadavji his expenses in the amount of \$6,628.75.

Denise Ashby
Arbitrator

July 15, 2008

Date